Supreme Court, U.S.
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No. 85-10

IN THE

Supreme Court of the United States

October Term, 1985

THE PRESBYTERY OF BEAVER-BUTLER OF THE UNITED PRESBYTERIAN CHURCH IN THE UNITED STATES OF AMERICA, *et al.*,
Petitioners,

v.

MIDDLESEX PRESBYTERIAN CHURCH, *et al.*,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

RESPONDENTS' BRIEF IN OPPOSITION

ROGER C. WIEGAND*
KENNETH C. KETTERING

REED SMITH SHAW & MCCLAY
Two Mellon Bank Center
Pittsburgh, PA 15219
(412) 288-3131

Counsel for Respondents

**Counsel of Record*

HERBICK & HELD PRINTING COMPANY, PITTSBURGH, PA. 15233

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QUESTIONS PRESENTED

1. Does this Court have jurisdiction to grant certiorari in this case, where (a) no federal question was raised by the petitioners before the Pennsylvania Supreme Court and (b) no substantial federal question is raised by the Petition?

2. Did the Pennsylvania Supreme Court violate the Religion Clauses of the First Amendment (as incorporated into the Fourteenth Amendment) when it decided this church property dispute in accordance with the internal laws of the denomination in question—thereby applying the "neutral principles of law" doctrine endorsed by, *e.g.*, *Jones v. Wolf*, 443 U.S. 595 (1979)?

PARTIES TO THE PROCEEDING

The Petition erroneously states that respondent Middlesex Presbyterian Church ("Middlesex") is an "unincorporated religious congregation." (Pet. ii). To the contrary, as stated in the opinion of the Pennsylvania Supreme Court, Middlesex is a Pennsylvania non-profit corporation which was incorporated in 1907. (Pet. 2a). Moreover, the Petition purports to name Middlesex as a petitioner, but the directors and officers of Middlesex have not authorized (and, indeed, oppose) the Petition. (Pet. ii).

Middlesex, the only corporation among the respondents, is a member of the Presbyterian Church in America, a nationwide religious denomination.

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RESPONDENTS' BRIEF IN OPPOSITION

JURISDICTION

We respectfully submit that this Court has no jurisdiction to grant the Petition for two reasons. First, petitioners failed to raise their purported federal question before the Pennsylvania Supreme Court. Second, the Petition fails to raise a substantial federal question. Our argument is presented below under "Reasons for Denying the Writ."

ADDITIONAL STATUTORY PROVISION INVOLVED

Pennsylvania Rule of Appellate Procedure 2116(a) (1984) is set forth in the Appendix hereto.

STATEMENT OF THE CASE

This is a dispute over the ownership of church property. The principal respondent, defendant below, is Middlesex Presbyterian Church ("Middlesex"), a Pennsylvania non-profit corporation. Middlesex was formerly a member of The United Presbyterian Church in the United States of America ("UPCUSA"), a nationwide religious association. Middlesex quit its membership in UPCUSA on April 19, 1981. The principal petitioner, plaintiff below, is The Presbytery of Beaver-Butler of the United Presbyterian Church in the United States of America (the "Presbytery"), a subordinate organ of UPCUSA. Plaintiffs seek to strip Middlesex of all of the property owned by Middlesex when it left UPCUSA. Plaintiffs sought an injunction awarding them that property, an accounting and related relief.

From its incorporation in 1907, Middlesex was a member of the Presbyterian Church in the United States in America, the predecessor by merger of UPCUSA. Middlesex remained a member of UPCUSA until 1981. Mid-

dlesex left UPCUSA by appropriately amending its articles of incorporation effective April 19, 1981. The amendment was duly authorized by the members of Middlesex at a special meeting on April 6, 1981 by a vote of 125 to 31. The amended articles of incorporation were reaffirmed by an unanimous vote on October 18, 1981. Petitioners do not contend that these actions were invalid as a matter of corporate law or that any member of Middlesex was ever expelled or denied the opportunity to vote.

Middlesex briefly operated as an independent church after it left UPCUSA. Attendance at its services did not materially change, and most of the few active members who had voted against the charter amendment continued to attend. On October 18, 1981, the members of Middlesex unanimously authorized Middlesex to join the Presbyterian Church in America (the "PCA"), another nationwide religious association. Middlesex was received into the PCA on November 14, 1981.

Meanwhile, the Presbytery refused to recognize Middlesex's power to end its membership in UPCUSA, and on April 27, 1981, after Middlesex had left UPCUSA, the Presbytery appointed an "Administrative Commission" to which it purported to give power to administer Middlesex's property.

Middlesex is a small church located in a rural area. Its only property is its church building, minister's residence and cemetery, plus books of worship, church records, furniture and about $12,500 in operating funds. All of this property was acquired solely out of Middlesex's own funds and contributions by its members. Title to all of this property is solely and unrestrictedly in Middlesex. Neither Middlesex nor any of its predecessors in title ever executed any deed of trust in favor of UPCUSA or

the Presbytery. Neither Middlesex nor its predecessors in title ever expressly agreed to hold its property in trust for, or granted any other property interest to, UPCUSA, the Presbytery or any other entity.

Because Middlesex never expressly granted UPCUSA any rights in its property, the Presbytery's claim to that property rests on the internal laws of UPCUSA at the time Middlesex left. Examining these internal laws, the Pennsylvania Supreme Court concluded that they created no such trust in favor of UPCUSA or its organs. "[I]t was undisputed that there was never any express trust language in the [UPCUSA] constitution during the entire period Middlesex remained affiliated with the denomination. In fact, a prior attempt by the predecessor denomination, circa 1929, to include express trust language in the constitution was defeated by the member churches." (Pet. 17a). Only in May 1981, after Middlesex had left UPCUSA, was UPCUSA's Constitution amended to add such trust language. (Pet. 14a). Accordingly, the Pennsylvania Supreme Court concluded that the plaintiffs had failed to establish "the clear unequivocal evidence necessary to support a conclusion that a trust existed." (Pet. 17a).

REASONS FOR DENYING THE WRIT

A. This Court does not have jurisdiction because the petitioners' constitutional argument was neither raised before nor considered by the Pennsylvania Supreme Court.

Jurisdiction does not lie in this Court under 12 U.S.C. § 1257 (1982) unless a federal question has been properly raised in the state courts. When "the highest state court has failed to pass upon a federal question, it will be assumed that the omission was due to want of proper presentation in the state courts, unless the aggrieved party in this Court can affirmatively show the contrary." *Webb v. Webb*, 451 U.S. 493, 495 (1981), *quoting Street v. New York*, 394 U.S. 576, 582 (1969). To be preserved, federal questions must be raised at each stage of the state appellate process to the extent required by state procedural rules. *Beck v. Washington*, 369 U.S. 541, 549-54 (1962). Pennsylvania appellate practice requires issues to be raised with specificity in the briefs to be preserved. Pennsylvania Rule of Appellate Procedure 2116(a) (1984); *Commonwealth v. Lobiondo*, 501 Pa. 599, 607 n.6, 462 A.2d 662, 666 n.6 (1983).

The Pennsylvania Supreme Court's opinion in the case at bar does not rule upon, or even mention, the petitioners' present constitutional argument. (Pet. 1a-17a). That is because the petitioners never made that argument to that Court. Nowhere in their forty-eight page brief on appeal in that Court was that argument raised. Indeed, the "Table of Authorities" in that brief did not even mention the First and Fourteenth Amendments.

This Court's Rule 21.1(h) requires petitioners to specify the manner in which federal questions were raised at each stage of the proceedings below. The only

such specification in the Petition, Pet. 7 n.2, alludes to the fact that we, the respondents herein, contended before the Pennsylvania Supreme Court that judgment in our favor is compelled by the Religion Clauses of the First Amendment, as well as by state law. The Pennsylvania Supreme Court did not find it necessary to address our constitutional contention, basing its decision solely on state law. Petitioners' opposition to our contention that the First Amendment compels judgment in *our* favor is in no way equivalent to the different argument they now raise—that the First Amendment compels judgment in *their* favor. A single clause of a single sentence of their brief suggested vaguely that there is "constitutional protection afforded hierarchical religious denominations," Pet. 7 n.2, but that was hardly adequate to raise the elaborate constitutional argument petitioners now urge. Accordingly, this Court is without jurisdiction to grant certiorari to hear that argument.

B. The Petition does not present a substantial federal question.

The Pennsylvania Supreme Court here expressly followed the "neutral principles of law" doctrine endorsed by *Jones v. Wolf*, 443 U.S. 595 (1979), this Court's most recent church property case, and by *Maryland & Virginia Eldership v. Church of God at Sharpsburg, Inc.*, 396 U.S. 367 (1970) *(per curiam)*, an earlier church property case relied upon by *Wolf*. In *Sharpsburg*, this Court dismissed for want of a substantial federal question an appeal in a case similar to this:

> In resolving a church property dispute between appellants, representing the General Eldership, and appellees, two secessionist congregations, the Maryland Court of Appeals relied upon provisions of state statutory law governing the holding of property by

> religious corporations, upon language in the deeds conveying the properties in question to the local church corporations, upon the terms of the charters of the corporations, and upon provisions in the constitution of the General Eldership pertinent to the ownership and control of church property. 254 Md. 162, 254 A.2d 162 (1969). Appellants argue primarily that the statute, as applied, deprived the General Eldership of property in violation of the First Amendment. Since, however, the Maryland court's resolution of the dispute involved no inquiry into religious doctrine, appellees' motion to dismiss is granted, and the appeal is dismissed for want of a substantial federal question.

396 U.S. at 367-68 (footnotes omitted). The Pennsylvania Supreme Court in the case at bar and the Maryland Court of Appeals in *Sharpsburg* reached their similar results by examining precisely the same kind of evidence and without inquiring into religious doctrine. (Pet. 12a-17a). Accordingly, the Petition does not present a substantial federal question.

C. Many courts have recently ruled identically to the Pennsylvania Supreme Court in cases precisely identical to this, and this Court recently ruled identically to the Pennsylvania Supreme Court in a case substantially identical to this.

Eight appellate courts around the country have recently been faced with precisely the same facts and issues involved in this case.[1] Each case involved a member church that left UPCUSA at substantially the same time

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1. In addition to the case at bar and the cases cited in the following paragraph of text, see *Foss v. Dykstra*, 342 N.W.2d 220 (S.D. 1983); *York v. First Presbyterian Church of Anna*, 130 Ill.App.3d 611, 474 N.E.2d 716 (1984), *petition for leave to appeal denied*, No. 63128 (Ill. 1985);

as did Middlesex. Each case involved the same written constitution of UPCUSA involved here.

With one exception the courts rejected the same arguments raised here and held that UPCUSA had no right to property owned by ex-member churches. The highest courts of Missouri, New York, Pennsylvania and South Dakota and the intermediate appellate courts of California, Illinois and Ohio each so held in a unanimous decision. The sole exception—an Iowa decision by a divided court—was based on a lower court decision in New York that was later reversed by the highest court of New York. Moreover, in three of those cases this Court refused to grant a petition for certiorari raising precisely the same arguments raised by the present Petition: *Presbytery of Elijah Parish Lovejoy v. Jaeggi*, 682 S.W.2d 465 (Mo. 1984), *cert. denied*, 105 S.Ct. 2361 (1985); *First Presbyterian Church of Schenectady v. UPCUSA*, 62 N.Y.2d 110, 464 N.E.2d 454, 476 N.Y.S.2d 86, *cert. denied*, 105 S.Ct. 514 (1984); and *Presbytery of Riverside v. Community Church of Palm Springs*, 89 Cal.App.3d 910, 152 Cal.Rptr. 854, *cert. denied*, 444 U.S. 974 (1979).

Furthermore, this Court recently reached the same conclusion on virtually identical facts in *Jones v. Wolf*, 443 U.S. 595 (1979). *Wolf* upheld against an identical constitutional challenge a Georgia decision that a Presbyterian denomination had no right to the property of an ex-member church, based on the internal laws of that

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Christensen v. Roumfort, No. 83-CA-124 (Ohio App., Aug. 29, 1984), *appeal dismissed*, No. 84-1636 (Jan. 4, 1985). *Contra, Fonken Community Church of Kamrar*, 339 N.W.2d 810 (Iowa 1983). Petitioners also cite *Babcock Memorial Presbyterian Church v. Presbytery of Baltimore*, 296 Md. 573, 464 A.2d 1008 (1983), *cert. denied*, 104 S.Ct. 1287 (1984), but that case was quite different and was correctly decided on its facts: it involved a member congregation of UPCUSA that made a gift of its property in violation of church law.

denomination in force at the time.[2] The only factual difference between *Wolf* and the case at bar is that *Wolf* involved the Presbyterian Church in the United States (the "PCUS"), a denomination which then was separate from UPCUSA, but which shortly thereafter merged with UPCUSA. However, that difference is immaterial, for at the time Middlesex left UPCUSA the internal laws of the PCUS applicable to termination of membership by congregations, as construed in *Wolf*, were substantially similar to the applicable internal laws of UPCUSA. Indeed, UPCUSA officials have admitted as much.[3]

In short, the arguments made by petitioners have already received an abundance of consideration by this Court and by other courts around the country. Those arguments do not merit reconsideration.

D. The Pennsylvania Supreme Court did not violate the Religion Clauses of the First Amendment, as incorporated into the Fourteenth Amendment, when it used "neutral principles of law" to resolve a property dispute between church bodies.

The issue stated by the Petition is whether a civil court may "substitut[e] its judgment" for that of a "church judicatory" in regard to an "action of [such] church judicatory" in respect of a "local church." (Pet. i).

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2. In *Wolf* this Court vacated the Georgia decision for factual reconsideration, but the Georgia Supreme Court reaffirmed its original decision, 244 Ga. 388, 260 S.E.2d 84 (1979), and this Court denied certiorari in respect of that reaffirmance, 444 U.S. 1080 (1980).

3. *See, e.g., Foss v. Dykstra*, 342 N.W.2d 220, 224 (S.D. 1983) (expressly finding that the provisions of PCUS law examined in *Wolf* are substantially similar to the applicable provisions of UPCUSA law). An official report on *Wolf* by a committee of UPCUSA's General Assembly admitted that the laws of the two denominations were "similar," and noted that "in property matters both churches have relied upon the legal doctrine of 'implied trust'. . ."

That issue is not present in this case. Middlesex, the local church involved here, quit its membership in UPCUSA before any church organ purported to issue any relevant order to Middlesex. After it quit, UPCUSA officials had no more power to issue orders to Middlesex than they had power to issue orders to any other non-member corporation. The only issue in this case is whether the petitioners have any right to Middlesex's property.

Moreover, even if it were applicable to this case, the legal proposition urged by the Petition is self-evidently false. To say, as does the Petition, that "church judicatories" have unreviewable power to "construe" church laws on all matters, civil and spiritual, and that civil courts are bound to enforce without question the wishes of "church judicatories" in all matters, is to make church officials unchecked dictators over member churches and individual members. They could "construe" into existence any rights or powers they wished or "construe" out of existence any provisions of their written constitutions they found inconvenient.

This Court's decisions support no such proposition. To the contrary, this Court has consistently held that the internal laws of a religious association represent a contract among its members that must be respected and enforced by civil courts—just as with other voluntary associations. To the extent those internal laws give particular powers to particular bodies within the association, such as the power to adjudicate disputes, the due exercise of such powers must be enforced by the courts—just as the courts must enforce the judgment of an arbitrator on matters committed to arbitration by contract. Furthermore, civil courts may never construe purely spiritual matters, such as matters of faith or doctrine.

But officers of a religious association do not have civil powers over members—such as powers over members' property—beyond the powers given them by the contract constituted by the denomination's internal laws. *Jones v. Wolf*, 443 U.S. 595 (1979); *Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696 (1976); *Presbyterian Church in the United States v. Mary Elizabeth Blue Hull Memorial Presbyterian Church*, 393 U.S. 440 (1969); *Watson v. Jones*, 80 U.S. (13 Wall.) 679 (1872).

This case thus involves only the construction of a written agreement—UPCUSA's Constitution. The trial court here found, and the Pennsylvania Supreme Court affirmed, that the UPCUSA Constitution is the sole law of the denomination. (Pet. 14a). The UPCUSA Constitution "d[id] not prohibit a congregation from disaffiliating" from UPCUSA and "did not create a trust, explicit or implicit, . . . in favor of UPCUSA." (Pet. 14a). In 1929, UPCUSA asked its members to ratify a proposed amendment to its Constitution that would have required each member church to hold its property in trust for UPCUSA. That proposal was voted down and never became part of the UPCUSA Constitution. (Pet. 14a). Not until May 1981, after Middlesex left UPCUSA, was UPCUSA's Constitution amended to require member churches quitting UPCUSA to forfeit their property to UPCUSA. (Pet. 14a). Construction of a written agreement is a matter primarily for the finder of fact. Given these facts, it cannot be said that the construction of UPCUSA's Constitution adopted by the Pennsylvania courts—and independently reached by appellate courts in six other states—is unreasonable.

Indeed, the result urged by Petitioners would violate the Religion Clauses. Petitioners claim a right to property they have not owned, controlled or paid for, without

warrant in church law. Before May 1981 the laws of UPCUSA were deliberately designed to let unhappy congregations leave freely and in peace. If the courts had awarded Middlesex's property to the Presbytery, that would have violated the right of Middlesex and other UPCUSA members under the Free Exercise Clause to rely upon the existing provisions of church law duly adopted by the members of UPCUSA. *See Serbian Eastern Orthodox Diocese v. Milivojevich*, 426 U.S. 696, 721-22 (1976) ("religious freedom encompasses the 'power [of religious bodies] to decide for themselves, free from state interference, matters of church government as well as those of faith and doctrine.' ") (Court's brackets). Moreover, had the Pennsylvania Supreme Court thus yielded its gavel to UPCUSA officials and deferred to their desires as to disposition of Middlesex's property, that would have been "delegating a governmental power to [a] religious institution[ ]" in violation of the Establishment Clause. *Larkin v. Grendel's Den, Inc.*, 459 U.S. 116, 123 (1982).

The decision of the Pennsylvania Supreme Court was not based on these constitutional considerations, however, but solely on state law. By employing the "neutral principles of law" doctrine endorsed by *Wolf*, the Pennsylvania courts avoided these potential constitutional problems. And, as this Court held in *Sharpsburg*, application of the "neutral principles of law" doctrine does not raise any substantial federal question.

CONCLUSION

For these reasons, the Petition for a Writ of Certiorari should be dismissed for lack of jurisdiction or, in the alternative, should be denied.

Respectfully submitted,

ROGER C. WIEGAND*
KENNETH C. KETTERING

REED SMITH SHAW & MCCLAY
Two Mellon Bank Center
Pittsburgh, PA 15219
(412) 288-3131

Counsel for Respondents

**Counsel of Record*

APPENDIX

ADDITIONAL STATUTORY PROVISION INVOLVED

Pennsylvania Rule of Appellate Procedure 2116(a) (1984) provides:

> (a) **General rule.** The statement of the questions involved must state the question or questions in the briefest and most general terms, without names, dates, amounts or particulars of any kind. It should not ordinarily exceed 15 lines, must never exceed one page, and must always be on a separate page, without any other matter appearing thereon. This rule is to be considered in the highest degree mandatory, admitting of no exception; ordinarily no point will be considered which is not set forth in the statement of questions involved or suggested thereby. Whenever possible each question must be followed immediately by an answer stating simply whether it was affirmed, negatived, qualified or not answered by the court or government unit below. If a qualified answer was given to the question, appellant shall indicate, most briefly, the nature of the qualification, or if the question was not answered and the record shows the reason for such failure, the reason shall be stated briefly in each instance without quoting the court or government unit below.